

ATTORNEY/CLIENT CONFIDENTIAL COMMUNICATION

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Dear Board, this email is to follow up on the delivery of the verbal legal opinion today to Perri Griffin.

As Perri and I discussed "Under Florida law, it is well-established that an owner of a healthy tree is not liable to an adjoining property owner for damage caused by encroaching tree branches or roots, but the adjoining property owner "is privileged to trim back, at [his] own expense, any encroaching tree roots or branches . . . which has grown onto his property." *Gallo v. Heller*, 512 So. 2d 215, 216 (Fla. 3d DCA 1987); *see also Scott v. McCarty*, 41 So. 3d 989 (Fla. 4th DCA 2010) (noting that *Gallo* reflects the predominate view around the country) (citing *Encroachment of Trees, Shrubbery, or Other Vegetation Across Boundary Line*, 65 A.L.R. 4th 603 (1988)). *Balzer v. Maxwell*, 263 So. 3d 189, 191 (Fla. 1st DCA 2018).

The Declaration does not provide any overriding provisions to this common law concept.

Below is also a snippet from the UF article we discussed that you can make available to your membership on this issue for reference.:

https://link.edgepilot.com/s/b90a22a4/hQY9wMp_Pk6g3pxQWRRhtA?u=https://edis.ifas.ufl.edu/publication/FE962

WHAT IS THE LIABILITY FOR OVER-HANGING BRANCHES AND ENCROACHING ROOTS?

Branches and roots frequently extend across property lines. Whether a branch or root from a tree on an adjacent landowner's property is the responsibility of the landowner with the tree located on his or her property or the landowner of the property to which the branches overhang or roots encroach depends upon the branches or roots themselves. If the branches or roots are healthy, then the landowner with the tree located on his or her property is not liable for damage caused by the branches or roots. The adjoining landowner may, at his or her own expense, trim back the branches or roots as he or she desires up to the property line. If the branches are dead, however, then the landowner with the tree located on his or her property may be responsible and could be liable for damages caused by the branches (1 Fla. Jur 2d Adjoining Landowners section 8 [2014]).

In *Scott v. McCarty*, a property owner brought action against a neighbor alleging that overhanging branches and roots from the neighbor's tree caused damage to his property (41 So.3d 989, 989 [Fla. 4th DCA 2010]). The Court affirmed the trial court's dismissal with

prejudice of appellant's complaint for damages based upon *Gallo v. Heller*, 512 So. 2d 215, 216 (Fla. 3d DCA 1987), which explained the common law rule:

[A] possessor of land is not liable to persons outside the land for a nuisance resulting from trees and natural vegetation growing on the land. The adjoining property owner to such a nuisance, however, is privileged to trim back, at the adjoining owner's own expense, any encroaching tree roots or branches and other vegetation which has grown onto his property.

Scott, 41 So. 3d at 989 (quoting *Gallo*, 512 So. 2d at 216) (alterations in original).

The *Scott* court prescribes the adjoining property owner engage in self-help to combat encroaching vegetation by suggesting the landowner resort to trimming. By doing so, this leaves an open question as to what other methods of self-help are available. It is not clear whether the adjoining property owner may spray encroaching vegetation with herbicide such as glyphosate, which could translocate and kill the entire plant. Alternatively, the adjoining property owner may wish to use a stump grinder to destroy roots that have encroached onto his/her property. It is not clear whether these or other self-help methods are permitted and whether employing them would create a cause of action against by the encroaching landowner against the encroached landowner

All my best,
Christene